11 U.S.C. § 362
O.R.S. 68.020(3)
ORS 68.620
Partnerships
Subordination
Trusts

<u>In re The Corey Partners</u>,

Dist. Ct. No. CV-92-6073-H0
Bankr. Case NO. 691-60081-H11

8/11/92 Judge Redden Affirming PSH unpublished

District court affirmed Judge Higdon's letter opinion denying in part Bank's motion for relief from automatic stay to name managing partner, individually, of debtor in possession, a general partnership, as defendant in state court foreclosure proceeding. Debtor in possession held valid interests in 2 of 6 parcels of real property upon which Bank sought foreclosure. Debtor's managing partner had pledged the property to Bank as collateral for personal and partnership loans. Became Bank had signed the partnership agreement as trustee on behalf of two trusts for the benefit of the managing partner's grandchildren, which each held a one percent interest in the partnership, Bank is the general partner of debtor whose liability is not limited to the value of the trust assets. Moreover, it claim as a creditor must be subordinated under partnership law to those non-partner creditors. Therefore, Bank was not entitled to relief from stay regarding the properties in which debtor in possession had an interest.

Mulheim, Mued Gill, Gorusch Johnnie 8-12-92

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BY..................

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In re The Corey Partners, Debtor.	CV-92-6073-HO Bankruptcy Court Case No. 691-60081-H11 OPINION

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REDDEN, Judge:

Commercial Bank appeals from the bankruptcy court's partial denial of its motion for relief from the automatic stay. For the reasons explained below, I affirm the bankruptcy court's ruling.

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BACKGROUND

In 1957, Robert Corey and his wife Betty Corey formed a general partnership to operate a chain of Hamburger stands, the Bob's 19-cent Hamburgers partnership. In 1979 and again in 1980, the Coreys each transferred a one-half percent interest in the partnership to separate trusts established for their two grandchildren. As a result, the trusts each held a one percent interest in the partnership and the Coreys each held 49 percent interests.

Appellant Commercial Bank (Bank) was appointed trustee of both trusts. While serving as trustee in the 1980s, Bank also made several personal loans to Robert Corey.

On December 31, 1986, the trusts and the Coreys executed a Liquidation of Partnership Agreement (dissolution agreement), which dissolved the Bob's 19-cent Hamburgers partnership. Under the dissolution agreement, direct ownership interests in the partnership's assets were distributed to the Coreys and to the trusts. Each received percentage shares in the assets equivalent to the percentage of the partnership they had owned. A trust officer of Bank signed the dissolution agreement as trustee for the trusts.

Also on December 31, 1986, the Coreys and the trusts executed a new partnership agreement, forming the Corey Partners partnership. Under it, certain interests in real property that had previously been owned by the Bob's 19 cent Hamburger partnership were declared to be property of the new partnership. As with the dissolution agreement, a Bank trust officer signed the agreement for the trusts. On June 1, 1990, Robert Corey removed Bank as trustee of the trusts.

In January 1991, Corey Partners filed a Chapter 11 bankruptcy petition. In the ensuing bankruptcy proceeding, the Debtor in Possession (Debtor) included, in listing the assets of the bankrupt estate, six properties which Robert Corey had pledged to Bank as collateral for personal loans that were in default.

Bank filed a motion in the bankruptcy court for relief from the automatic stay.[1] Specifically, Bank requested to be allowed to name Debtor as a defendant in a suit to foreclose on its security interests in the six properties Debtor had listed as assets of the bankrupt estate.

Debtor opposed the motion, arguing that Bank is a general partner and creditor of Debtor. Because Bank is its general partner, Debtor argued, Debtor has a right to offset -- against any liability it has to bank -- its right to contribution from Bank, as a partner, for partnership liabilities. Debtor also argued that as a general partner, Bank's claims against it should be subordinated under partnership law to those of non-partner creditors.

In response, Bank argued that the trust estates, not

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[1] Under section 362 of the Bankruptcy Code, all suits against a debtor are automatically stayed upon the debtor's filing of a Chapter 11 petition. 11 U.S.C. § 362.

Bank, are general partners in Debtor. Alternatively, if it is general partner, Bank argued, its liability is limited to the value of the trust assets.

The Bankruptcy court agreed with Debtor that Bank is a general partner in Debtor, and that its liability as such is not limited to the value of the trust assets. See August 26, 1991 Opinion, pp. 7-10. The court further found that, as to properties in which the debtor has a valid interest, Bank was also a creditor of debtor. Id. at 10-13. The court found that Debtor held valid interests in two of the six properties at issue: the Bernheim Contract and the Ranch, and therefore denied Bank's motion for relief from the automatic stay as to those properties.

Bank now appeals, challenging the court's finding that it is a general partner of debtor, that its liability is not limited to the value of the trust property it administered, and the findings respecting the Bernheim contract and the Ranch.

STANDARD OF REVIEW

"The district court acts as an appellate court, reviewing the bankruptcy court's findings of fact under the clearly erroneous standard and its conclusions of law de novo." In re Daniels-Head & Associates, 819 F.2d 914, 918 (9th Cir. 1987).

DISCUSSION

1. Is Bank a General Partner in Debtor?

a. The Bankruptcy Court's Analysis

In holding that Bank is a general partner in debtor, the bankruptcy court noted that Bank signed the partnership agreement as a partner. The agreement's first section lists as parties Robert E. Corey, Betty L. Corey, Bank as trustee for Justin R. Corey Trust, and Bank as trustee for Julia Laraine Corey Trust. Ex. 2, Appellant's Excerpt of Record. These parties are thereafter referred to throughout the agreement as "Partners." Section 1.1 states their agreement to form a general partnership under Oregon law.

The court rejected Bank's contention that the trusts, and not Bank, were partners. The court reasoned that because trust estates cannot themselves make promises, they cannot enter into contracts, and therefore cannot be parties to a general partnership agreement. Nor is a trustee an agent of the trust under the law of agency, because a trust, being simply a collection of property (or, in another sense, a description of a relationship regarding property), cannot be a principal. The court found the Oregon Uniform Partnership Act consistent with its analysis in failing to specifically name "trusts" in its nonexclusive listing of those "persons" who can enter into partnership contracts. O.R.S. § 68.020(3). The court concluded that:

> when a trustee enters into a contract, even if signing only in his representative capacity, it is the trustee, not the trust, which is legally bound by the promises it has made in the contract.

August 26, 1991 Op., p. 9.

/ / /

b. Intent As a Requisite of Partnership Formation

Bank argues that it could not have become a partner in Debtor under the Corey Partners agreement because the parties to the agreement did not intend that result. It cites numerous Oregon partnership cases for the proposition that partnerships are creatures of voluntary contract, created only where the parties intend it. The cited cases, however, demonstrate that parties need not expressly intend to form a partnership (or to become partners) to do so in the eyes of the law. Rather, in determining whether a partnership exists in a given instance -- and thus whether the legal rules governing partnerships apply -- Oregon courts look to the nature of the parties' intended arrangements. Where those arrangements have the attributes of a partnership, the law treats them as such.

Thus, to form a partnership, parties need merely have intended to form an association having the attributes of a partnership: an entity separate from themselves as individuals which they co-own and carry on as a business for profit. See ORS 68.110(1).

> [W]here the parties to a contract, by their acts, conduct, or agreement, show that they intended to combine their property, labor, skill, and experience, or some of these elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners.

Eldridge, et al. v. Johnson, 195 Or. 379, 395, 245 P.2d 239, 246-47 (1952).

The <u>Eldridge</u> case is illustrative. There, a key employee's contract to purchase an interest his employer's business, under which the employee received a correlating share of its profits, was held to create a partnership. By contrast, the court in <u>H.H. Worden Co. v. Beals</u>, 120 Or. 66, 250 P.375 (1926) held that a contract providing for logging, milling and sale of one party's timber by the other did not create a partnership, because the parties dealt with each other as individuals, without creating a separate business association in which they shared a community of interest. In neither <u>Eldridge</u> or <u>Worden</u> did the contracts make express references to partnerships.

Bank argues there is no evidence in this case that it and the Coreys intended to combine their property, labor, and/or skill to carry on as co-owners of Debtor, and to share the profits and losses as partners. Rather, Bank contends, it acted only as the trustee of the two trusts, and was not considered a partner by anyone.

This argument obscures and distorts the legal effect of Bank's having acted as a trustee in executing the dissolution and Corey Partners agreements. When considered in light of relevant trust law, these agreements demonstrate that Bank and the Coreys established a relationship having all the attributes of a partnership, and is therefore appropriately treated as one under the law.

Under the law of trusts, a trustee holds legal title to property transferred into trust subject to the fiduciary duty to deal with it for the benefit of the trust beneficiaries. Restatement (Second) of Trusts, §§ 2, 88. Thus, when Bank accepted its appointment as trustee of the two grandchildren's trusts, it became the legal owner of separate one-percent interests in the original Bob's 19-cent Hamburgers partnership. Bank subsequently executed, as trustee, the agreement dissolving Bob's 19-cent Hamburgers. Under that agreement, Bank received, in exchange for the trust partnership interests, direct interests in the property the partnership had owned.

In executing the Corey Partners Agreement, the Coreys and Bank formed a new partnership. Each contributed the real property interests that had been distributed to them under the dissolution agreement. Consequently, the real property formerly owned by Bob's 19-cent Hamburgers came to be owned by the Corey Partners partnership. The new agreement expressly provided that the parties would share the partnership's profits and losses in proportion to their stated ownership shares, and designated Robert Corey as the managing partner. Thus, on its face, the Corey Partners Agreement evidences the parties' intent to combine their property and to carry on, as co-owners, a common business, sharing its profits and losses. Because the agreement incorporates all the critical elements of a partnership, the relationship it establishes would be treated as a partnership under Oregon law even if it were not expressly referred to as one.

c. <u>Facts Showing Lack of Intent to Form a Partnership</u>

Bank asserts the following facts as evidence that the parties did not intend it to be a partner in Debtor. First, Bank contends that it did not consider itself a partner, nor intend to be held personally liable. Both Wendy Weaver, the trust department's trust officer who signed the agreement, and Marvin Abeene, Trust Department Manager, testified that they believed that by executing documents "as trustee," the trust department, as a matter of law, could not be held personally liable. Bank contends it would not have executed the agreements if it were aware that in doing so it risked personal liability.

Second, when the partnership agreement was signed, Bank contends, the Coreys knew that the trust department did not consider itself personally liable. Mr. Corey had served as a director of Bank for twenty years, and for much of that time -- possibly ten years -- had been a member of its trust committee. Abeene testified that, as a member of that committee, Mr. Corey would have been well aware that the trust department had a policy against exposing itself to personal liability in entering into contracts on behalf of trusts. Mr. Corey himself testified that he considered the trust department the "custodian" of the trusts. The Coreys did not hold the trust department out as a partner in debtor, and its financial statements did not include the bank's assets. The Coreys' accountant filed yearly partnership income tax returns on behalf of the trusts as partners.

Finally, Bank points out that after it was removed as trustee on June 1, 1990, the partnership was not dissolved. Under O.R.S. 68.510 and 68.530(1)(d), Bank argues, a partnership dissolves when any partner ceases to be associated with the carrying on of the business or is removed. Yet, following Bank's removal, Corey Partners undertook no steps to wind up it affairs, but rather, as Mr. Corey testified, continued business as usual. No new partnership was formed.

None of these contentions undermines the evidence that Bank and the Coreys arranged a contractual relationship that includes all of the critical elements of a partnership, and which the law will therefore regard as a partnership. Rather, they are probative of the parties' subjective understandings of the legal effect of their contract. As discussed above, however, Oregon partnership law does not require that to form a partnership, parties have expressly intended to do so -- or even have understood that they have done so. For this reason, these contentions are not helpful to Bank's argument that it could not have become a partner for lack of partnership intent. A partnership was clearly established under the Corey Partners agreement. If Bank is personally liable on that contract, it is a general partner in debtor. That it may not have understood the legal effect of the contract it executed is not grounds for relieving it from its resulting obligations. <u>Shell</u>

Oil Co. v. Boyer, 234 Or. 270, 277-78, 381 P.2d 494 (1963).

d. The Trusts as Partners

Bank maintains, however, that the trust estates, and not Bank, are liable under the agreement. It contends that the bankruptcy court erred in concluding that trusts cannot enter into contracts, and thus cannot be general partners, citing Ogden Railway Co. v. Wright, 31 Or. 150, 49 P. 975 (1897) and Richmond v. Ogden Street Ry Co., 44 Or. 48, 74 P. 333 (1903). Neither case, however, supports a contrary conclusion.

In Ogden Railway Co., the Oregon Supreme Court reversed the dismissal of a complaint brought against two trustees in their personal capacities. Plaintiff sued on promissory notes the defendants had signed "as trustees." The Court rejected the defendants' contentions that they had signed the notes only as representatives of the trusts. Its analysis echoes that of the bankruptcy court here: a "trust estate cannot promise," and thus cannot be a principal, and a contract entered into by a trustee is therefore the personal undertaking of the trustee. 31 Or. at 153, 49 P. at 976 (quoting Taylor v. Davis, 110 U.S. 330 (1883)). The court acknowledged, however, that the trustees' liability could be limited by express agreement between the contracting parties. Id.

In Richmond, the Court affirmed a decree reforming the notes that had been at issue in Ogden Railway, based on unequivocal testimony by the parties that in executing the notes they had agreed the trustees' liability was limited to the amount of the trust property they held, and they were not to incur personal liability. 44 Or. at 51-52, 74 P. at 334. Bank also cites <u>Rothschild Bros. v. Kennedy</u>, 86 Or. 566, 169 P. 102 (1917), which goes no further, noting specifically that "even though [the trustee] purchased the goods for the benefit of the trust estate, he would be personally liable in the absence of an agreement exempting him from liability." 169 P.2d at 104.

Bank also cites <u>Terminal Trading v. Babbit</u>, 109 P.2d 564 (Wa. 1941). There, the Washington Supreme Court reasoned that the rule that a trust estate cannot contract is one of necessity. It therefore refused to apply the rule where the trust estate was a corporation, a legal entity that <u>is</u> capable of contracting. 109 P.2d at 568. <u>Terminal Trading</u> is distinguishable from this case, as the trust estates at issue here are not legal entities capable of contracting.

e. <u>Restatement of Trusts § 265</u>

Bank also argues that because it merely held title in the partnership for the benefit of the trusts, its liability is limited under Restatement (Second) of Trusts § 265, to the extent the trust can indemnify it. This argument speaks to both Bank's status -- whether it is a general partner -- and that the scope of its resulting liability. Its thrust is that bank was merely a passive trustee. In support, Bank emphasizes that it did not participate in the hamburger business after the initial trust transfers; it was not consulted regarding partnership business decisions; it was not notified of partnership meetings; and it was not consulted regarding the plan to dissolve the old partnership and create a new one. Rather, Bank merely executed the documents relating to formation of the new partnership, as requested by Robert E. Corey, so that the trusts could maintain their one percent ownership interests in the Coreys' business. After formation of the new partnership, the Bank's role continued to be passive.

Restatement of Trusts (Second), § 265, on which Bank relies, provides that:

> Where a liability to third person is imposed upon a person, <u>not as a result of a contract made by him or a tort committed by him but because he is the holder of the title to property</u>, a trustee as holder of the title to the trust property is subject to personal liability, but only to the extent to which the trust estate is sufficient to indemnify him.

(emphasis added).

Bank incurs liability here not merely because it held title to property for the trusts, but as a consequence of the contract it made as trustee to form the new partnership. Although it may not have intended to do more than hold title for the trusts, it does not follow from that subjective intent that it is entitled to the benefit of the Restatement § 265 rule.

f. <u>Conclusion: Bank is a General Partner in Debtor</u>

As discussed above, that the parties did not expressly intend that Bank become a partner in Debtor did not preclude it from doing so under partnership law. The Corey Partners agreement contains all the elements of partnership, and therefore established one as a matter of law. Under controlling Oregon precedent in the Ogden Railway cases, Bank as trustee is personally liable on that contract, as trusts are incapable of entering into contracts. For these reasons, I affirm the bankruptcy court's holding that Bank is a general partner in Debtor.

2. Is Bank Liable Beyond the Extent of the Trust Property It Administered?

a. The Bankruptcy Court's Analysis

In holding that Bank's liability as a general partner is not limited to the trust assets, the bankruptcy court noted that at common law, a trustee's personal liability to third parties arising in the administration of the trust was unlimited. It recognized, however, that in Ogden Railway, Richmond, and Rothschild Bros., supra, trustees were relieved of personal liability on contracts to provide goods or services based on factual showings that the contracting parties had agreed the trustees' liability was limited to the amount of trust assets.

The bankruptcy court found the Ogden Railway line of cases inapplicable here, due to a key difference in the nature of general partnership agreements from that of contracts for the sale of goods or services. By executing a general partnership agreement -- unlike other contracts -- the parties create a new legal entity capable of suing and being sued in its own name. A defining characteristic of that entity is that the partners are personally liable for its debts; the creditors of the partnership may reach the partner's personal assets to satisfy partnership debts. Thus, the court reasoned,

> [I]f the document signed is agreed to be a general partnership agreement, as here, then absent language in the document allowing it one cannot say that the liability of the general partner signators may be limited. Such a statement would be oxymoronic.
>
> [Bank's] status as . . . a partner includes by definition personal liability for the debts of the partnership. It cannot now be heard to argue that the law of trusts should be applied to limit its liability.

August 26, 1991 Op., p. 10.

The court further held that even if Ogden Railway line of cases were applicable, it could not find that Bank had shown that the parties to the partnership agreement had intended its liability to be limited.

b. Bank's Argument

Bank contends that partnership agreements are no different from other contracts for the purposes of Ogden Railway. It then emphasizes language in the Ogden Railway decision which suggests that a trustee's liability is limited where the facts and circumstances surrounding a contract's execution indicate this was the parties' intent.

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Finally, emphasizing the same facts it asserted as evidence the parties never intended it to be a partner (see ante, pp. 9-10), Bank argues that the facts and circumstances surrounding the execution of the Corey Partners agreement indicates the parties did not intend Bank to be liable beyond the extent of the trust assets.

c. Analysis

The bankruptcy court's conclusion that the Ogden Railway liability limiting rule is inapplicable to general partnership agreements is well reasoned. By the contracts involved in Richmond and Rothschild Bros., the parties limited their liability to one another. By contrast, for the parties here to have limited Bank's liability as a partner, they would have limited its liability to others, in a manner inconsistent with the defining characteristic of the very form of association they expressly purported to adopt. Bank conclusorily dismisses this distinction without addressing its merits.

Even if the bankruptcy court erred in finding Ogden Railway inapplicable, Bank has not shown that it is entitled to relief under that rule. Bank's reliance on "facts and circumstances" surrounding execution of the Corey Partners agreement is misplaced. Under Ogden Railway, Richmond, and Rothschild Bros., an express understanding is required to limit a trustee's liability under a contract. Bank has submitted no evidence that the parties agreed its liability as trustee was limited. I affirm the Bankruptcy's court's ruling that Bank's liability as a partner in debtor is not limited.

3. <u>Should Bank Be Granted Relief From the Automatic Stay To Foreclose on the Bernheim Contract and The Ranch?</u>

Bank challenges the bankruptcy court's findings that the Bernheim Contract and the Ranch are assets of the debtor partnership. Both of these properties were declared by the Corey Partners agreement to be partnership property, taken subject to existing encumbrances.

a. <u>The Bernheim Contract</u>

The Bernheim contract is a land sale contract in which Robert E. Corey held a vendor's interest. In 1985, Corey assigned his interest to Bank as collateral for personal loans. That assignment contained a future advances clause. The contract was transferred to the Corey Partners on December 31, 1986, under the partnership agreement, subject to existing encumbrances. In 1987 and 1989, Corey again assigned the contract to Bank as security for further personal loans.

The bankruptcy court found that Bank had held a perfected security interest in the Bernheim contract at the time the contract was transferred to the partnership. September 27, 1991 Op., p. 2-3. The court also found that the future advances clause in the 1985 assignment secured Bank's 1987 and 1989 loans. August 26, 1991 Op., p. 17. Thus, Bank's security interest extended to the amounts owed on those loans although they were made after title to the contract had passed to the partnership. Bank argues that because the debt secured by its security interest exceeds the value of the contract, debtor has no equity in the contract. Further, Bank's interest in the contract is not a partnership obligation, because it predated formation of the partnership.

Bank's arguments undermine the logic of subordinating its claim to those of nonpartner creditors under ORS 68.620(2). To grant Bank relief from the stay would nonetheless be inappropriate in light of Debtor's right to offset any contributions it may need from Bank as its partnership to pay partnership liabilities. See ORS 68.620(1)(b) and (4). For that reason, I affirm the bankruptcy court's ruling denying relief as to the Bernheim contract.

b. The Ranch

The Ranch is a piece of real property previously owned by Robert Corey. In 1982, Corey and U.S. Housing and Development Corporation mortgaged the Ranch to Bank. U.S. Housing was a Corey-controlled corporation that went out of business in the early 1980s. The 1982 mortgage contained a future advances clause. Corey transferred the Ranch to the partnership by quitclaim deed on December 31, 1986. On September 30, 1987, Bank released the 1982 mortgage.

Robert Corey individually mortgaged Ranch to Bank on September 30, 1987 and May 19, 1989. On the same dates, Corey signed "Consent to Pledge" forms granting liens to Bank. Corey signed the consents twice, once individually and once on behalf of Corey Partners.

The Bankruptcy court found the 1987 and 1989 mortgages ineffective to grant liens on Ranch to Bank. Bank could not rely on the 1982 mortgage's future advances clause because it had released that mortgage. Further, the partnership, which owned Ranch after December 31, 1986, had not authorized use of its interest as collateral for personal loans to Robert Corey. August 26, 1991 Op., p. 18. The court therefore denied Bank relief from the automatic stay.

Bank argues the court erred in failing to find that the 1987 mortgage was merely a continuation of the existing 1982 (personal) mortgage. It cites Schwartzler v. Lemas, 82 P.2d 419 (Cal. 1938) for the proposition that the 1987 and 1989 mortgages are not mortgages on partnership property. In Schwartzler, Lemas mortgaged business equipment to secure two promissory notes. Lemas later sold a 50 percent interest in the business to Vierra. Vierra knew of the notes and mortgage and took his interest subject to the mortgage. Subsequently, Lemas executed a new mortgage on the same equipment to renew and extend one of the original notes. When the note was not paid, the lender foreclosed. Vierra intervened, objecting that the second mortgage, executed after he had purchased his interest in the business, was not binding on him.

The California court held that the second mortgage had "created no new obligation." 82 P.2d at 421.

> Under the circumstances of this case the lien created by the first mortgage was never extinguished. The second mortgage therefore did

> not abridge the rights acquired by Vierra. There is substantial proof that the [second] mortgage was executed to renew the original $3,317 note which was secured by the first mortgage and that the original lien was therefore not extinguished.

Id. The court found that Lemas had not mortgaged partnership property by executing the second mortgage, but had merely extended the original mortgage, subject to which Vierra had taken his interest. Vierra was therefore bound by it.

Bank contends the 1987 loan in this case was a consolidation of several outstanding loans Corey owed Bank, including that secured by the 1982 mortgage on Ranch, and therefore that, under Schwartzler, it should be considered to have been a mere extension of the original 1982 mortgage. For this reason, Bank continues, the 1987 lien should not be viewed as having been a transfer of partnership property. Therefore, whether Corey had been authorized to use such property as collateral for his personal loans is irrelevant.

Bank's analogy to Schwartzler is unpersuasive. There, the partnership property was re-mortgaged to secure the same note, in the same amount, that it had originally been mortgaged for when the new partner, Vierra, bought his interest. The record here is not clear as to the amount of indebtedness the Ranch secured at the time the partnership took title. Several different loans are involved. The 1987 and 1989 mortgages purported to secure new loans in an amount that consolidated several prior loans that were outstanding. Thus, the Ranch was mortgaged to secure new and different obligations.

Bank also argues that even if the bankruptcy court was correct in concluding that the 1987 loan was not a renewal of the 1982 loan, it erred in finding Corey had not been authorized to grant the liens on Ranch. Bank argues that in mortgaging Ranch in 1987 and 1989, Corey had apparent authority to act on the partnership's behalf, because he appeared to be "carrying on in the usual way" the business of the partnership. ORS 68.210. Bank also argues Corey also had actual authority, citing the partnership agreement's provision giving him, as managing partner, responsibility for all investment and business decisions. Finally, bank argues that the partnership should be deemed to have ratified Corey's actions by virtue of the partners' acceptance of the benefits of those actions. Bank contends the partners benefitted because if Corey had not restructured his debts, the Bank and another mortgage holder, U.S. National Bank, would have foreclosed on their interests, to the detriment of the partners.

These arguments are also unpersuasive. Pledging partnership property as security for personal debt cannot reasonably be seen as carrying on the partnership's business in the usual way. Nor can the partnership agreement's language granting the managing partner authority to conduct business reasonably be construed to actually authorize such action. Finally, as the debtor argued in response, there is no evidence that the other partners, Bank's trust department or Betty Corey, knowingly accepted any benefit from Robert Corey's actions.

CONCLUSION

I affirm the bankruptcy court's partial denial of the motion for relief from the automatic stay.

DATED this 7 day of August, 1992.

JAMES A. REDDEN
United States District Judge